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Does the FBI Have the Tools to Fight Domestic Terrorism?

Louis Freeh, the director of the FBI, is one of the straight shooters in Washington, so his views are well worth heeding on the question of federal government monitoring of domestic terrorist groups.

At the Senate hearings following the Oklahoma City bombing, Freeh said two things that sound contradictory. First, he said that "for two decades, the FBI has been at an extreme disadvantage with regard to domestic groups which advocate violence. We have no intelligence or background information on them until their violent talk becomes deadly action."

But he also said that his agency did not need any broader authority than it now has in order to do the required job. It's all a matter of interpreting the existing law and regulations.

Asked by Sen. Fred Thompson (R-Tenn.) if these present "guidelines are not sufficiently broad in order to allow you to do the job you need to do," Freeh replied: "No, senator. If these guidelines are interpreted broadly and proactively, as opposed to defensively, which has been the case for many, many years, I feel confident that within the four corners of those guidelines and the language therein, we have sufficient authority."

Deputy Attorney General Jamie Gorelick agreed, under questioning by Sen. Arlen Specter (R-Pa.) that in the case of a paramilitary organization, like one of the volunteer militias led by people who use inflammatory anti-government rhetoric, "a surveillance would be fully constitutional." She too said that such surveillance has not been ordered because of "caution" on how the existing guidelines can be interpreted.

On NBC-TV's "Meet the Press" last Sunday, Attorney General Janet Reno confirmed that "if you read the guidelines, I think they give the FBI the tools to do the job." The problem, she said, is that "the interpretation has been limiting."

The reason is clear. In 1976 a Senate select committee concluded after 15 months of investigation that the FBI and other intelligence agencies had consciously and repeatedly violated the law and the Constitution in building files on the political activities of hundreds of thousands of American citizens—often without the knowledge or scrutiny of higher officials.

In response to the gross excesses of J. Edgar Hoover's long regime, President Ford's attorney general, Edward H. Levi, wrote new guidelines for FBI monitoring of domestic organizations, which barred surveillance and infiltration unless there is a "reasonable indication" that they are ready to resort to violence to achieve their goals. Subsequent attorneys general in both Republican and Democratic administrations kept the guidelines in place.

Last November, according to Gorelick's testimony, Reno responded to complaints from Freeh about the "uncertainty" the guidelines were causing, and set up a working group in the Justice Department to see whether they could be clarified. The wheels of bureaucracy grind slowly, and that group has not yet reported.

But in the wake of the Oklahoma City bombing, President Clinton and members of both parties in Congress are pressing for broader anti-terrorism authority. Some of the measures—like setting up a domestic counter-terrorism center to coordinate the federal response to this threat and enlisting the armed forces' expertise on nuclear, chemical and biological weapons—clearly make sense.

When it comes to surveillance of domestic political groups, however, it would be wise to figure out how much authority the Justice Department already has before giving it more. Clearly, the excesses of the Hoover era have made the FBI wary of going close to the boundaries set by the Levi guidelines. Clearly, too, there has been, as Gorelick testified, "considerable doubt as to what the guidelines permit."

She told Specter that in her view, even "without a reasonable indication of a crime, a preliminary inquiry can be undertaken," and "you could use informants and you could collect information, and then determine whether you have reasonable indication for a full-fledged investigation."

That view appeared to surprise Specter. It points up the importance of knowing how far existing authority really extends. If current guidelines, properly interpreted, are adequate to the situation, as Freeh, Gorelick and Reno all say, then Congress should not enlarge the FBI's surveillance authority. The political abuse of wiretaps and other investigative tools is too recent and too flagrant to court that danger again. Oklahoma City should not usher in a return to Big Brother government.